

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/710,155	CORNELIUS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David Y. Jung	2134	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to 10/10/2006.
2. ☐ The allowed claim(s) is/are 1-12, 14, 16-20 and 30-54.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br/>Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>Paper No./Mail Date _____</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____</li> </ol> |
|--|---|

**DETAILED ACTION**  
**EXAMINER'S AMENDMENT**

The application has been amended as follows:

Claims 55 and 56 have been cancelled.

***Allowable Subject Matter***

Claims 1-12, 14, 16-20, 30-54 are allowed. The following is an examiner's statement of reasons for allowance:

The Examiner's previous position (noted in the previous Office Action) has been directly contradicted by the decision panel in the Pre-Appeal Conference (Mr. Chris Revak and Mr. Eddie C. Lee). Thus, the rejections cannot be sustained.

The Examiner's previous position had been that the very definition of "firewall" would screen and keep out data. Thus, as noted in the Pre-Appeal Brief (filed by Applicant), "[i]n order to overcome the deficiencies of Devine et al., the Office Action has asserted that '[i]n software firewalls, the number of interconnections is always dependent on a type of security mode.' No reference is cited to support this assertion." The Examiner had not cited any reference to cite this assertion because a firewall screens and keeps out data. To the genuine contradiction of the Examiner's previous position, the Pre-Appeal Conference has decided against the Examiner's previous position.

Due to the decision of the Pre-Appeal Conference Panel regarding this issue of fact, the Examiner no longer can sustain a rejection. Acceptance of a higher authority's decision regarding the issue of fact is akin to collateral estoppel. Thus, the Examiner is now estopped from arguing within the prosecution of this application regarding the issue of firewall; the claims must now be allowed.

Under a different standard or under a forum permitting a de novo consideration of the facts, the decisions regarding the claims of this application may be different. At the moment of this writing of this Office Action, KSR vs. Teleflex (which was, of course, decided January 6, 2005 in the Federal Circuit, and was specifically noted as non-precedential) has been reviewed by the United States Supreme Court and awaits a decision. If there is any difference between the viewpoints of the two courts, then KSR vs. Teleflex may permit more obviousness issues to be brought into the claims of this application. Nevertheless, the Examiner notes he must decide on the basis of current rulings on laws and current rulings on facts and must not decide on the basis of speculation regarding the future.

The claims are allowed.

### ***Conclusion***

#### ***Points of Contact***

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 2134

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-3836 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Jung whose telephone number is (571) 272-3836 or Jacques Louis-Jacques whose telephone number is (571) 272-6962.


Art Unit: 2134

David Jung

-----

Patent Examiner

12/11/06

A handwritten signature in black ink, appearing to read 'David Jung', with a long, sweeping horizontal stroke extending to the right.